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## ***Bryan v. State Roads Comm'n***

### **Six Person Juries Are Sufficient for Condemnation Damages Proceedings under the Maryland Constitution**

By Meredith Stein

The Court of Appeals of Maryland held that pursuant to its plain language interpretation of the 1992 amendments to Article 5 of the Maryland Constitution's Declaration of Rights, juries consisting of at least six individuals are sufficient for condemnation damages proceedings. *Bryan v. State Roads Comm'n*, 356 Md. 4, 736 A.2d 1057 (1999). The court based its holding largely on the 1992 amendments to, and legislative history for, Article 5 of the Maryland Constitution's Declaration of Rights and section 8-306 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland. The court's ruling determined that a condemnation proceeding is a civil action, and that a jury of at least six is the minimum required under applicable Maryland law.

In order to expand New Hampshire Avenue in Montgomery County, the State Roads Commission (the "Commission") required a portion of Wesley and Wona Bryan's (the "Bryan's") property to be condemned. A trial was held to discover the amount of just compensation the Bryans were to receive for their inconvenience and loss of property. Under the Maryland Constitution and the law of eminent domain, the Bryans were entitled to

have a jury of their peers determine the damages to be awarded.

The Commission filed a "quick take" petition in the Circuit Court for Montgomery County which was subsequently followed by a formal condemnation petition. At trial, the Bryans requested a twelve person jury under Article III, section 40 of the Maryland Constitution. The court denied the Bryans' request, and held that a six member jury was appropriate in a condemnation damages case under Courts and Judicial Proceedings section 8-306. A six member jury subsequently awarded the Bryans \$12,800. Disappointed with the jury's award, the Bryans appealed to the Court of Special Appeals of Maryland to determine if they, as landowners in a condemnation damages proceeding, had a constitutional right to a twelve person jury. The Court of Special Appeals of Maryland affirmed the lower court's decision. The Bryans then filed a petition for a writ of certiorari in the Court of Appeals of Maryland.

The court began its analysis by pointing out that a general jury trial is guaranteed in the Maryland Constitution's Declaration of Rights in Articles 5, 21, and 23. *Id.* at 7, 736 A.2d at 1059. The court noted that in 1992, Article 5, which discusses the right to a jury in civil trials, was

amended through the addition of paragraphs (b) and (c). The amended sections state that parties to civil proceedings are entitled to a jury of at least six where the right to a jury trial has been preserved. *Id.* The court also added that the Maryland Constitution does not state, or imply, that a jury of less than twelve is prohibited in the same circumstance. *Id.* Article 23 discusses in part that a jury will decide issues of fact in civil proceedings that exceed \$10,000. *Id.* at 8, 736 A.2d at 1059.

The court found that common law historically provided for no jury trial in condemnation cases in Maryland. *Id.* at 9, 736 A.2d at 1060. This was generally because condemnation proceedings were viewed as "special proceedings." *Id.* at 10, 736 A.2d at 1060. Condemnation cases were reviewed by a "commission of viewers, or appraisers, usually three or five in number" who would discuss and resolve the question of damages without the usual characteristics of a trial. *Id.*

The court went on to explain that Article III, section 40, of the Maryland Constitution provides a specific guarantee to "a right to have a jury determine just compensation in condemnation cases." *Id.* at 10, 736 A.2d at 1060-61. More specifically, the constitution provides

a provision that covers highways and “quick-take” proceedings. *Id.* at 8, 736 A.2d at 1059. This provision allows the Commission to immediately take the property needed for construction of a highway, with payment tendered to the owners at that time. *Id.* at 8, 736 A.2d at 1059-60. However, it also provides that any later additional sums awarded to the owners by a jury must also be paid. *Id.*

The court cited *Baltimore Belt R.R. Co. v. Baltzell*, 75 Md. 94, 23 A. 74 (1891), a case on point that dealt with jury trials in condemnation cases, and also cited to Article III, section 40, as support for its holding. *Id.* at 10, 736 A.2d at 1060-61. The landowners in *Baltzell* argued that a statute, which authorized the railroad company to make an “application to a justice of the peace,” was a violation of the right provided by Article III, section 40. *Bryan* at 11, 736 A.2d at 1061. (quoting *Baltzell*, 75 Md. at 98, 23 A. at 74). The statute allowed the justice of the peace to put together a panel of twelve persons, out of a group of twenty qualified to be jurors, to determine the question of damages. *Bryan* at 11, 736 A.2d 1061. (quoting *Baltzell*, 75 Md. at 98, 23 A. at 74). In *Baltzell*, the court of appeals held that “either a common law jury or a special jury of twelve” complied with Article III, section 40. *Id.* (quoting *Baltzell*, 75 Md. at 108, 23 A. at 77). The court pointed out that Maryland has traditionally defined “jury” to mean a common law jury. *Id.* However, in condemnation cases broader meanings of the term “jury” are used. *Id.* The court further

explained that Article III, section 40, was in place to provide that the owner of property not be relieved of their property without just compensation. *Id.* at 12, 736 A.2d at 1062. (quoting *Baltzell*, 75 Md. at 108, 23 A. at 77). Additionally, the court noted that owners should have the right to have twelve persons decide the amount of compensation to be paid. *Id.*

During the period between 1851 and 1992 Article III, section 40, entitled landowners during condemnation cases to a twelve person jury. *Id.* at 13, 736 A.2d at 1062. The court looked to the 1992 amendment of Article 5, however, to see if that constitutional right had been modified. *Id.* The Bryans objected, stating that their right to a twelve person jury was not derived from Article 5, but from Article III, section 40. *Id.* The Court of Appeals of Maryland disagreed, pointing to the plain language of Article 5, paragraphs (b) and (c). *Id.* The court deduced that a six-person jury was available in “any proceeding in which there is a right to a jury trial, except a criminal proceeding.” *Id.* Condemnation cases, the court concluded, qualify as “any civil proceeding,” and have been consistently treated as such. *Id.* at 14, 736 A.2d at 1062. Finally, the court reiterated that nowhere in the state constitution was a jury in a civil proceeding prohibited from being less than twelve persons. *Id.* at 14, 736 A.2d at 1063.

Due to the intrusive nature of eminent domain, the court’s holding in *Bryan* may lead to the public feeling cheated by the Maryland Constitution, in that they are not

entitled to as many jurors as in the past. Landowners are ultimately being deprived of their property and may feel entitled to a larger panel to determine the amount of their damages based on loss and inconvenience. A jury of six will provide less of a cross section of the public, possibly reducing, or conversely, increasing the amount of damages received. The practitioner should be aware that while a jury of twelve is permissible, due to cost and difficulty of obtaining jurors, a judge may be more inclined to limit or permit a jury of as few as six persons.